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OFFICE OF PETITIONS

In re Application of :
WYBENGA et al. : LETTER REGARDING PATENT
Application No. 10/720,899 : TERM ADJUSTMENT
Filed: 11/21/2003 :
Attorney Docket No. 2003.07.015.BN0:

This letter is in response to the "GOOD FAITH AND CANDOR LETTER REGARDING PATENT TERM ADJUSTMENT" filed December 15, 2008. Pursuant to applicants' duty of good faith and candor to the Office, applicants request that the determination of patent term adjustment under 35 U.S.C. 154(b) be reviewed for accuracy. Applicants state that they believe that the patent term adjustment should be corrected from 710 days to 709 days.

The request for review of the determination of patent term adjustment is GRANTED.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the notice of allowance is 709 days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

Applicants assert that the Office incorrectly entered the date of receipt of the reply to the nonfinal Office action of December 14, 2007, as March 16, 2008, instead of March 17, 2008. In support of the assertion, applicants provided an itemized postcard receipt containing a USPTO date-stamp of March 17, 2008.

The application history has been reviewed and it has been concluded that the determination of patent term adjustment under 35 U.S.C. 154(b) of 710 days is incorrect.

A review of record reveals that the PTA Calculations viewable in PAIR incorrectly reflects the date of receipt of the reply to the nonfinal Office action as March 16, 2008, instead of March 17, 2008. However, it is noted that the Image File Wrapper for the instant application shows the correct date of receipt of the reply as March 17, 2008. Thus, the date of March 17, 2008, instead of March 16, 2008, should have been used for calculating PTA.

Applicants filed their response on March 17, 2008, in excess of the three-month period from the mailing date of the nonfinal Office action. See 37 CFR 1.704(b). Accordingly, the period of adjustment of the term of the patent should have been reduced by 3 days (not 2 days), counting the number of days in the period beginning on the day after the date that is three months after the date of mailing of the nonfinal Office action, March 15, 2008, and ending on the date the reply was filed, March 17, 2008. Accordingly, the period of reduction of 2 days is being removed and a period of reduction of 3 days is being entered.

In view thereof, the correct patent term adjustment at the time of the mailing of the notice of allowance is **709 days** (712 days of Office delay - 3 days of applicant delay).

As this letter was submitted as an advisement to the Office of an error in applicants' favor, the Office will not assess the \$200.00 fee as set forth in 37 CFR 1.18(e). Therefore, the \$200.00 fee submitted on April 11, 2008, will be refunded to the Deposit Account. The Office thanks applicants for their good faith and candor in bringing this to the attention of the Office.

Applicants are reminded that any delays by the Office pursuant to 37 CFR §§ 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR § 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this matter should be directed to Christina Tartera Donnell, Senior Petitions Attorney, at (571) 272-3211.

Kery A. Fries

Kery A. Fries
Senior Legal Advisor
Office of Patent Legal Administration

Enclosure: Copy of updated PAIR screen

Day : Saturday
Date: 2/28/2009**PALM INTRANET**

Time: 14:06:45

PTA Calculations for Application: 10/720899

Application Filing Date:	11/21/2003	PTO Delay (PTO):	712
Issue Date of Patent:		Three Years:	0
Pre-Issue Petitions:	0	Applicant Delay (APPL):	2
Post-Issue Petitions:	0	Total PTA (days):	709
PTO Delay Adjustment:	-1		

File Contents History

Number	Date	Contents Description	PTO	APPL	START
63	02/28/2009	ADJUSTMENT OF PTA CALCULATION BY PTO		1	
49	09/24/2008	MAIL NOTICE OF ALLOWANCE			
48	09/24/2008	ISSUE REVISION COMPLETED			
47	09/17/2008	ALLOWED CASE RETURNED TO THE EXAMINER FOR CLERICAL PROCESSING			
46	09/17/2008	DOCUMENT VERIFICATION			
45	09/17/2008	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED			
44	09/15/2008	EXAMINER'S AMENDMENT COMMUNICATION			
43	09/15/2008	NOTICE OF ALLOWABILITY			
42	08/18/2008	AMENDMENT AFTER FINAL REJECTION			
41	08/24/2008	DATE FORWARDED TO EXAMINER			
40	08/18/2008	AMENDMENT AFTER FINAL REJECTION			
39	06/16/2008	MAIL FINAL REJECTION (PTOL - 326)			
38	06/12/2008	FINAL REJECTION			
37	04/17/2008	DATE FORWARDED TO EXAMINER			
36	03/16/2008	RESPONSE AFTER NON-FINAL ACTION		2	35
35	12/14/2007	MAIL NON-FINAL REJECTION			
34	11/26/2007	NON-FINAL REJECTION			
33	09/21/2007	DATE FORWARDED TO EXAMINER			
32	08/14/2007	RCE- AF PROCESSED			
31	09/21/2007	DATE FORWARDED TO EXAMINER			
30	09/18/2007	REQUEST FOR CONTINUED EXAMINATION (RCE)			
29	09/21/2007	DISPOSAL FOR A RCE/CPA/129 (EXPRESS ABANDONMENT IF CPA)			
28	06/24/2004	CORRECTED FILING RECEIPT			

27	04/12/2004	CORRECTED FILING RECEIPT			
26	09/18/2007	WORKFLOW - REQUEST FOR RCE - BEGIN			
25	09/06/2007	MAIL ADVISORY ACTION (PTOL - 303)			
24	09/02/2007	ADVISORY ACTION (PTOL-303)			
23	08/19/2007	DATE FORWARDED TO EXAMINER			
22	08/14/2007	AMENDMENT AFTER FINAL REJECTION			
21	06/18/2007	MAIL FINAL REJECTION (PTOL - 326)			
20	06/08/2007	FINAL REJECTION			
19	04/06/2007	DATE FORWARDED TO EXAMINER			
18	03/23/2007	RESPONSE AFTER NON-FINAL ACTION			
17	03/23/2007	NEW OR ADDITIONAL DRAWING FILED			
16	01/03/2007	MAIL NON-FINAL REJECTION	712		-1
15	12/22/2006	NON-FINAL REJECTION			
14	12/10/2006	CASE DOCKETED TO EXAMINER IN GAU			
13	10/06/2006	CASE DOCKETED TO EXAMINER IN GAU			
12	10/06/2006	CASE DOCKETED TO EXAMINER IN GAU			
11	03/21/2006	CASE DOCKETED TO EXAMINER IN GAU			
10	07/02/2004	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
9	07/02/2004	CASE DOCKETED TO EXAMINER IN GAU			
8	02/25/2004	APPLICATION RETURN FROM OIPE			
7	02/25/2004	APPLICATION RETURN TO OIPE			
6	02/25/2004	APPLICATION DISPATCHED FROM OIPE			
5	02/25/2004	APPLICATION IS NOW COMPLETE			
4	02/05/2004	CLEARED BY OIPE CSR			
3	02/05/2004	CASE CLASSIFIED BY OIPE			
2	12/25/2003	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	11/21/2003	INITIAL EXAM TEAM NN			

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EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

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TERMINAL DISCLAIMER TO ACCOMPANY PETITION

Docket Number (Optional)

In re Application of:

Name:

Application Number:

Filed:

For:

The owner*, _____ of _____ percent interest in the above-identified application hereby disclaims a terminal part of the term of any patent granted the above-identified application equivalent to: (1) if the above-identified application is a design application, the period of abandonment of the above-identified application, and (2) if the above-identified application is a utility or plant application, the lesser of: (a) the period of abandonment of the application; or (b) the period extending beyond twenty years from the date on which the above-identified application was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed. This disclaimer also applies to any patent granted on a utility or plant application filed before June 8, 1995, or a design application, that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the above-identified application. This disclaimer is binding upon the grantee, and its successors or assigns.

Check either box 1 or 2 below, if appropriate.

1. For submissions on behalf of an organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the organization.
2. The undersigned is an attorney or agent of record. Registration Number _____

Signature

Date

Typed or Printed Name

Telephone Number

Terminal disclaimer fee under 37 CFR 1.20(d) included.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

* Statement under 37 CFR 3.73(b) is required if terminal disclaimer is signed by the assignee (owner). Form PTO/SB/96 may be used for making this certification. See MPEP § 324.

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.